

## Page 1 of 2

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 1, 2008</p> <p><b>Date of NOE Relating to this Case:</b> February 29, 2008</p> <p><b>Background Facts:</b>            The EDPRP was filed on August 21, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on August 25, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>            The Respondent has not completed Corrective Actions.</p> <p><b>WR:</b>            Failed to obtain appropriate authorization prior to storing or diverting state water associated with his increasing the height of the [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].</p>	<p><b>Total Assessed:</b> \$1,050</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$1,050</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b>            The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days:               <ol style="list-style-type: none"> <li>Have the dam and reservoir evaluted by a licensed professional engineer, and certify that either the capacity of the reservoir is less than 200 acre feet or will be reconstructed to be less than the 200 acre feet limit; or</li> <li>Submit a completed Water Rights application to the TCEQ for a permit to impound and use water from behind the Site 9 dam on Upper Lake Fork Creek watershed.</li> </ol> </li> <li>Within 45 days, submit written certification to demonstrate compliance with either Ordering Provision No. 2.a. or 2.b.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

<b>DATES</b>	Assigned	26-Feb-2008	Screening	11-Mar-2008	EPA Due	
	PCW	27-Jun-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Jeff Rowland
Reg. Ent. Ref. No.	RN101582484
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	35542	No. of Violations	1	
Docket No.	2008-0434-WR-E	Order Type	1660	
Media Program(s)	Water Rights	Enf. Coordinator	Harvey Wilson	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$5,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$1,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 5% Enhancement **Subtotal 2, 3, & 7** \$50

Notes: An enhancement is recommended because the Respondent received a NOV for the same or similar violation.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

**Total EB Amounts** \$19 **Subtotal 6** \$0  
**Approx. Cost of Compliance** \$250 0% Enhancement\*  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$1,050

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$1,050

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$1,050

**DEFERRAL** **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** \$1,050

Screening Date 11-Mar-2008

Docket No. 2008-0434-WR-E

PCW

Respondent Jeff Rowland

Policy Revision 2 (September 2002)

Case ID No. 35542

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101582484

Media [Statute] Water Rights

Enf. Coordinator Harvey Wilson

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

An enhancement is recommended because the Respondent received a NOV for the same or similar violation.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 11-Mar-2008 <b>Respondent</b> Jeff Rowland <b>Case ID No.</b> 35542 <b>Reg. Ent. Reference No.</b> RN101582484 <b>Media [Statute]</b> Water Rights <b>Enf. Coordinator</b> Harvey Wilson <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2008-0434-WR-E <div style="text-align: right;"><b>PCW</b></div> <div style="text-align: right; font-size: small;"> <i>Policy Revision 2 (September 2002)</i>  <i>PCW Revision February 29, 2008</i> </div>																								
<b>Rule Cite(s)</b> <input style="width: 100%;" type="text" value="30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121"/>																									
<b>Violation Description</b> <input style="width: 100%;" type="text" value="Failed to obtain water rights authorization from the commission to use state water. Specifically, the Respondent did not have authorization to use the water in the reservoir behind the dam at Site 9 on the Upper Lake Fork Creek water shed."/>																									
<b>Base Penalty</b> <input style="width: 100%;" type="text" value="\$5,000"/>																									
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																									
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;"><b>Release</b></td> <td style="width: 10%; text-align: center;"><b>Harm</b></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: right;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: right;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> <b>Percent</b> <input style="width: 50px;" type="text" value="0%"/> </div>		<b>Release</b>	<b>Harm</b>						Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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<b>&gt;&gt; Programmatic Matrix</b>																									
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;"><b>Falsification</b></td> <td style="width: 10%; text-align: center;"><b>Major</b></td> <td style="width: 10%; text-align: center;"><b>Moderate</b></td> <td style="width: 10%; text-align: center;"><b>Minor</b></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> <b>Percent</b> <input style="width: 50px;" type="text" value="10%"/> </div>		<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>			<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>													
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	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>																					
<b>Matrix Notes</b>	<input style="width: 100%;" type="text" value="100% of the rule requirement was not met."/>																								
<b>Adjustment</b> <input style="width: 100%;" type="text" value="\$4,500"/>																									
<input style="width: 100%;" type="text" value="\$500"/>																									
<b>Violation Events</b>																									
<div style="display: flex; justify-content: space-between;"> <div> <b>Number of Violation Events</b> <input style="width: 50px;" type="text" value="2"/> </div> <div> <input style="width: 50px;" type="text" value="39"/> <b>Number of violation days</b> </div> </div> <div style="margin-top: 10px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">daily</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">monthly</td> <td style="text-align: center;">x</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table> <div style="text-align: right; margin-top: 10px;"> <b>Violation Base Penalty</b> <input style="width: 100%;" type="text" value="\$1,000"/> </div> </div> <div style="margin-top: 10px; border: 1px solid black; padding: 5px;"> Two monthly events are recommended from the date of the inspection (February 1, 2008) until the date of screening (March 11, 2008). </div>			daily				monthly	x	<input type="text"/>		quarterly	<input type="text"/>	<input type="text"/>		semiannual	<input type="text"/>	<input type="text"/>		annual	<input type="text"/>	<input type="text"/>		single event	<input type="text"/>	<input type="text"/>
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	annual	<input type="text"/>	<input type="text"/>																						
	single event	<input type="text"/>	<input type="text"/>																						
<b>Economic Benefit (EB) for this violation</b>																									
<b>Estimated EB Amount</b> <input style="width: 100%;" type="text" value="\$19"/>																									
<b>Statutory Limit Test</b>																									
<b>Violation Final Penalty Total</b> <input style="width: 100%;" type="text" value="\$1,050"/>																									
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width: 100%;" type="text" value="\$1,050"/>																									

**Economic Benefit Worksheet**

Respondent Jeff Rowland  
Case ID No. 35542  
Reg. Ent. Reference No. RN101582484  
Media Water Rights  
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$250	12-Jun-2007	31-Dec-2008	1.6	\$19	n/a	\$19
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of preparing, submitting, and obtaining a water rights certificate. Date Required is the date of the non-compliance. Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$19

## Compliance History

Customer/Respondent/Owner-Operator:	CN603274457	ROWLAND, JEFF	Classification:	Rating:
			Average .	
Regulated Entity:	RN101582484	UPPER LAKE FORK CREEK WS SCS SITE 9 DAM	Classification:	Site Rating:
			Average	
ID Number(s):	DAM SAFETY	ID NUMBER		TX00493
Location:	1.8 miles north of Point, on McBride Branch, a tributary of Lake Fork Creek in Rains County			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	March 11, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 11, 2003 to March 11, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Harvey Wilson	Phone:	239-0321	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 10/19/2007 | (611937) |  |
| 2 | 02/26/2008 | (616973) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 10/19/2007  | (611937) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 299, SubChapter A 299.4  |          |                          |
| Description: | Failure to obtain the services of a registered professional engineer in the state of Texas for preparation of the plans and specifications for alteration of the service spillway drop inlet. |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 299, SubChapter C 299.22   |          |                          |
| Description: | Failure to obtain the executive director's written approval of final construction plans and specifications prior to altering the existing dam.  |          |                          |
| Self Report? | NO  |          | Classification: Major    |
| Citation:    | 2B TWC Chapter 11, SubChapter A 11.121  |          |                          |
| Description: | Failure to obtain a permit from the commission to appropriate state water.  |          |                          |
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
AGAINST JEFF ROWLAND;  
RN101582484**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-0434-WR-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 11 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jeff Rowland ("Mr. Rowland").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Mr. Rowland owns property that includes an earthen dam and reservoir located 1.8 miles north of Point, on McBride Branch a tributary of Lake Fork Creek, in Rains County, Texas (the "Site").
2. Mr. Rowland's Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021.
3. During an inspection on February 1, 2008, a TCEQ Central Office investigator documented that Mr. Rowland failed to obtain appropriate authorization prior to storing or diverting state water associated with his increasing the height of the drop inlet on the impoundment. Mr. Rowland did not have authorization to use the water in the reservoir behind the dam at Site 9 on the Upper Lake Fork Creek watershed.
4. Mr. Rowland received notice of the violation on or about March 4, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement

Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jeff Rowland” (the “EDPRP”) in the TCEQ Chief Clerk’s office on August 21, 2008.

6. By letter dated August 21, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Rowland with notice of the EDPRP. According to the return receipt “green card”, Mr. Rowland received notice of the EDPRP on or about August 25, 2008 as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Rowland received notice of the EDPRP, provided by the Executive Director. Mr. Rowland failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Rowland is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Rowland, by failed to obtain appropriate authorization prior to storing or diverting state water associated with his increasing the height of the drop inlet on the impoundment in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Rowland with proper notice of the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Rowland has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Rowland and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 11.0842, the Commission has the authority to assess an administrative penalty against Mr. Rowland for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission’s jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Rowland is assessed an administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) for violations of TEX. WATER CODE ch. 11 and rules of the TCEQ. The payment of this administrative penalty and Mr. Rowland's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jeff Rowland; Docket No. 2008-0434-WR-E to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. Rowland shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Rowland shall have a licensed professional engineer evaluate the dam and reservoir, and certify that either the capacity of the reservoir is less than 200 acre feet or will be reconstructed to be less than the 200 acre feet limit; or
  - b. Within 30 days after the effective date of this Order, Mr. Rowland shall submit a completed Water Rights application to the TCEQ for a permit to impound and use

water from behind the Site 9 dam on Upper Lake Fork Creek watershed, as required by 30 TEX. ADMIN. CODE ch. 297.

- c. Within 45 days after the effective date of this Order, Mr. Rowland shall submit written certification of compliance with either Ordering Provision 2.a. or 2.b. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Rowland shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Water Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 76903

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Rowland. Mr. Rowland is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

5. If Mr. Rowland fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Rowland's failure to comply is not a violation of this Order. Mr. Rowland shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Rowland shall notify the Executive Director within seven days after Mr. Rowland becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Rowland shall be made in writing to the Executive Director. Extensions are not effective until Mr. Rowland receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Rowland if the Executive Director determines that Mr. Rowland has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jeff Rowland  
DOCKET NO. 2008-0434-WR-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF JIM SALLANS

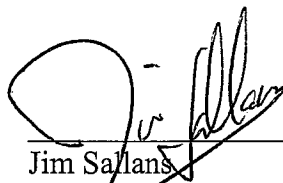
STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jeff Rowland" (the "EDPRP") with the Office of the Chief Clerk on August 21, 2008.

I sent the EDPRP to Mr. Rowland at its his last known address on August 21, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Mr. Rowland received notice of the EDPRP on August 25, 2008, as evidenced by the signature on the card.

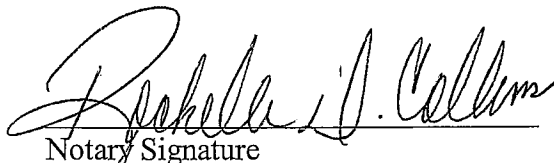
More than 20 days have elapsed since Mr. Rowland received notice of the EDPRP. Mr. Rowland failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".



Jim Sallans  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 17<sup>th</sup> day of October, A.D., 2006.

  
Notary Signature

Notary Stamp

